

January 17, 2012

TO: Members of the Michigan Senate

FROM: Mark Griffin, Michigan Petroleum Association  
Ed Weglarz, Associated Food and Petroleum Dealers  
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RE: Urging Support for SBs 528-533—LUST Bills

Our organizations represent the businesses that own or have owned underground storage tanks for the purposes of dispensing motor fuel to the public. We urge your support for the bills as they are considered by the full senate. We have worked numerous hours with bill sponsors, other stakeholders and especially the DEQ to craft legislation that promotes the cleanup of Leaking Underground Storage Tanks (LUST) sites that both protect the public health, welfare and the environment and do so in the most cost effective manner.

The new laws would reinforce the use of Risk Based Corrective Action for the cleanup of LUST sites based on standards developed by the American Society for Testing and Materials. Michigan first adopted ASTM standards in statute in 1995. The program has drifted back toward generic cleanup criteria without regard to risk resulting in the old practice of digging and hauling soil until the petroleum is all gone as about the only way to close a site. The pollution is just transferred to a landfill. This is very expensive and the cause of the bankrupting of the former Michigan Underground Storage Tank Financial Assurance fund available to tank owners to cover cleanups. Claims were no longer accepted by the state starting in mid-1995. Revenues were derived from the imposition of a 7/8 of a cent per gallon fee levied on all refined products. (The MUSTFA fee) It has morphed into the Refined Petroleum Fee which is still collected today and used mostly to fund programs formerly financed by the General Fund. The fee sunsets again at the end of 2012.

The bills re-institute the RBCA process by allowing self directed site specific cleanups by qualified professionals, which are subject to selective audits by the department. The focus is on controlling the interface of petroleum in the ground with other soils, groundwater, adjacent properties etc. If the product is contained and not impacting the other media, it can be left in the ground, monitored and allowed to bio-remediate, a process where existing underground microbes break down the petroleum hydrocarbons into natural components. The DEQ has set time frames to initiate and complete audits. After this time, the plans submitted by the

responsible party are deemed approved. If DEQ later discovers unacceptable risks are present at the site and the cleanup was faulty, they can force a cleanup, or initiate one and seek cost recovery. Further, the Attorney General is authorized to bring action to abate an imminent and substantial endangerment to the public health, safety, welfare, or the environment.

The Senate Fiscal Agency has an excellent floor summary that provides more detail about the legislation. Our review shows 33 states and the Virgin Islands have adopted the RBCA process to cleanup LUST sites. DEQ often states there are over 9000 LUST sites in the state of which 4500 are orphan sites where the government will end up with responsibility for cleanup. Michigan has consistently ranked last among the states in obtaining closure of LUST sites. The goal of this reform package is to promote cost effective closure while protecting public health, safety and the environment.

Far too many properties in every part of the state sit vacant with no chance of sale or redevelopment with the status quo. Enactment of these bills will get cleanups going again and put people to work while redeveloping some of the long vacant eyesores in your districts.

## **SUMMARY OF PROPOSED PART 213 REFORMS**

### **SB 528 (S-1)**

Maintains separation between the general clean up program and the underground storage tank clean up program. Fully adopts a risk based corrective action (RCBA) process as published in American Society for Testing and Materials (ASTM) standards. Addresses source control issues utilizing a cost effective approach which insures protection of public health and the environment. Reforms the selective audit program so that owners and operators have predictability and finality. Maintains causation based liability. Provides the department and private parties with enforcement tools. Establishes qualification for consultants which perform corrective action.

### **SB 529 (S-1)**

Allows owners and operators to resolve disputes between owners and operators and the department through the response activity review panel created under Part 201. Gives owners and operators the option to resolve disputes through the office of administrative hearings within the department. Repeals the requirement that the department certify and maintain lists of qualified underground storage tank consultants and underground storage tank professionals.

### **SB 530 (S-1)**

Revises the initial assessment and final assessment reporting requirements to recognize site specific clean up criteria. Requires certification from the consultant performing corrective action that closure has been completed.

### **SB 531 (S-1)**

Revises and adopts definitions necessary to implement the ASTM RCBA process.

**SB 532 (S-1)**

Allows a person to whom an administrative order is issued to petition the department to resolve disputes related to the administrative order. Allows the department to seek declaratory judgment regarding liability for future corrective action costs.

**SB 533 (S-1)**

Recognizes that administrative rules are not necessary to implement the revised clean up program. Codifies the attorney general=s opinion regarding the prohibited use of guidelines.